



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,260	12/03/2003	Thomas W. Parker	3984500-145102	4922

23570 7590 08/02/2005

PORTER WRIGHT MORRIS & ARTHUR, LLP
INTELLECTUAL PROPERTY GROUP
41 SOUTH HIGH STREET
28TH FLOOR
COLUMBUS, OH 43215

EXAMINER

SHAKERI, HADI

ART UNIT

PAPER NUMBER

3723

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,260

Applicant(s)

PARKER ET AL.

Examiner

Hadi Shakeri

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 120303.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Art Unit: 3723

DETAILED ACTION

Claim Rejections - 35 USC § 102

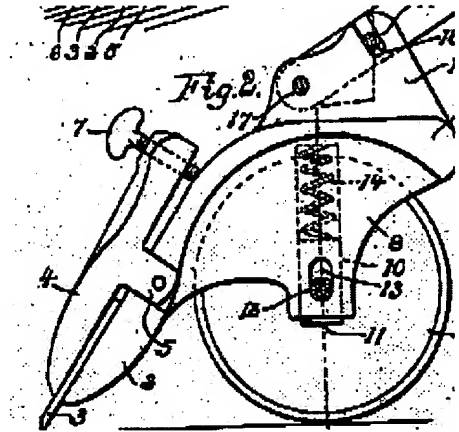
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 9, 28, 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Peltier (917,890).

Peltier discloses all of the limitations of claim 1, i.e., a tool comprising a base (1) a blade (3) forwardly extending from the base having a planar portion forming a leading edge (6), an elongated handle (16) rearwardly extending from the base, a pair of wheels (9) attached to the base rearward of the blade being spaced apart and having a common axis.



Regarding claims 2, 4 and 9; Peltier meets the limitations, e.g., removable blade, shaft or handle extending from the base at a location forward of the wheel (i.e., not behind it), a rear grip located at a rearward of the shaft and a fore grip (21) along the shaft.

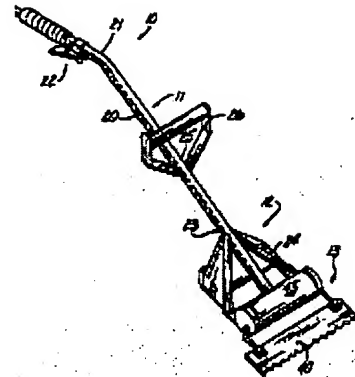
Regarding claims 28 and 32; peltier as applied above meets the limitations.

3. Claims 13, 15, 16, 28, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Nicolosi et al. (5,988,021).

Nicolosi et al. discloses all of the limitations of claim 13, i.e., a tool comprising a base a blade (40) forwardly extending from the base, an elongated handle (11) rearwardly extending

Art Unit: 3723

from the base, at least one wheel (45) attached to the base rearward of the blade, wherein the blade has a planar portion forming a leading edge and wherein the shaft has an obtuse angle forming a forward portion (20) having a center axis which intersects the plane formed by the planar portion of the blade between the planar portion and the at least one wheel and a rearward portion (21) which intersects the plane formed by the planar portion forward of the blade.

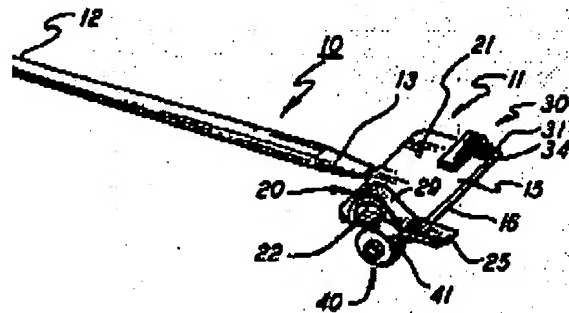


Regarding claims 15 and 16; Nicolosi et al. meets the limitations, e.g., rear grip rigidly secured to the rearward portion and forming an acute angle with a central axis of the rearward portion (i.e., zero); being tube.

Regarding claims 28, 32 and 33; Nicolosi et al. as applied above meets the limitations.

4. Claims 1, 4, 8, 9, 28, 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Lipka et al. (4,324,042).

Lipka et al. discloses all of the limitations of claim 1, i.e., a tool comprising a base (21) a blade (25) forwardly extending from the base having a planar portion forming a leading edge, an elongated handle (12) rearwardly extending from the base, a pair of wheels (40) attached to the base rearward of the blade being spaced apart and having a common axis.



Regarding claims 4, 8, 9, 28, 32; Lipka et al. meets the limitations, e.g., shaft or handle extending from the base at a location forward of the wheel, a rear grip located at a rearward of

Art Unit: 3723

the shaft and a fore grip along the shaft(anywhere along the mid portion), axles being rigidly secured to the base.

Regarding claims 28 and 32; Lipka et al. as applied above meets the limitations.

Claim Rejections - 35 USC § 103

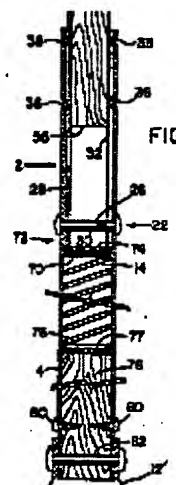
5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10, 20-23, 25 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peltier in view of Jacobs et al. (5,957,516).

Peltier meets all of the limitations of claim 34, as indicated in above, except for rear grip to have a passage slidably receiving a rear end of the shaft and the resilient material therebetween.

Jacobs et al. teaches shock absorbing tool handle. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of Peltier with shock absorbing handle as taught by Jacobs et al. to reduce impact to a user when blade strikes a hidden object, e.g., nails.



Regarding claims 20-23, 25 and 34, Peltier as modified by Jacobs et al. meets the limitations. Regarding using plastic or polyurethane foam it is noted that Peltier as modified by Jacobs et al. meets the claimed invention except for the use of the specific materials. It would have been obvious to one having ordinary skill in the art at the time the invention was made to plastic or polyurethane foam in providing the resiliency, since it has been held to be within the

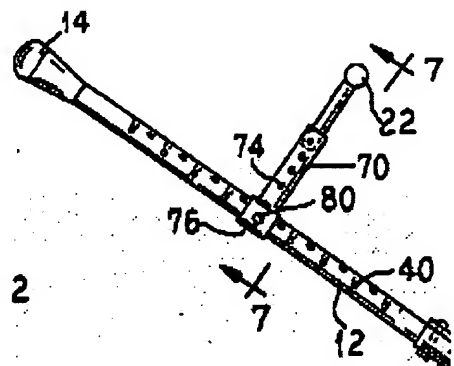
Art Unit: 3723

general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claims 11, 12 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peltier in view of Adams (4,690,447).

Peltier meets all of the limitations of claim 11, as indicated above, except for the fore grip to be axially adjustable along the shaft.

Adam teaches shovels with axially adjustable fore grip. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of Peltier with axially adjustable fore grip as taught by Adam to adjust the handle to the user's particular height, arm length and physical conditions.



Regarding claims 12 and 29-31, Peltier as modified by Adams meets the limitations.

8. Claims 1-5, 7, 9, 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicolosi et al. in view of Peltier.

Nicolosi et al. meets all of the limitations of claim 1, as indicated above, except for a pair of wheels.

Peltier teaches scraper tool with a pair of wheels having floating axles. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of Nicolosi et al. with floating axles as taught by Peltier as an alternative means of arranging the elements, e.g., to reduce weight.

Regarding claims 2-5, 7, 9, 35 and 37, of Nicolosi et al. as modified by Peltier meets the limitations.

Art Unit: 3723

9. Claims 5, 7-9, 13, 15-17, 33, 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipka et al. in view of Zeisig (3,222,699).

Lipka et al. meets all of the limitations of claim 5, as indicated above, except for the shape of the handle. Zeisig teaches ergonomic scraper handles having an obtuse angle forming a forward and rearward sections.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of Lipka et al. with the ergonomic handle as taught by Zeisig to improve the operation, e.g., reducing lower back strain.

Regarding claims 7-9, 13, 15-17, 33, 35 and 37, of Lipka et al. as modified by Zeisig meets the limitations.

10. Claims 10, 20-23, 25 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipka et al. in view of Jacobs et al.

Lipka et al. meets all of the limitations of claim 10, as indicated above, except for rear grip to have a passage slidably receiving a rear end of the shaft and the resilient material therebetween. An obvious modification in view of Jacobs et al. (see section 6 above).

Regarding claims 20-23, 25 and 34, Lipka et al. in view of Jacobs et al. meets the limitations as indicated in section 6 above.

11. Claims 11, 12 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipka et al. in view of Adams.

Lipka et al. meets all of the limitations of claim 11, as indicated above, except for a fore grip located along the shaft and axially adjustable. An obvious modification in view of Adams (see section 7 above).

Art Unit: 3723

Regarding claims 12 and 29-32, Lipka et al. in view of Jacobs et al. meets the limitations as indicated in section 7 above.

12. Claims 18, 19 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipka in view of Zeisig as applied to claims 13 and 35 above, and further in view of Adams.

Lipka et al. as modified by Zeisig meets all of the limitations of claim 18, as indicated above, except for a fore grip located along the rearward portion of the shaft and axially adjustable. An obvious modification in view of Adams (see section 7 above).

Lipka et al. as modified by Zeisig and Adams meets all of the limitations of claims 19 and 38.

13. Claims 6, 14, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipka in view of Zeisig as applied to claims 5, 13 and 35 above, and further in view of Jacobs et al.

Lipka et al. as modified by Zeisig meets all of the limitations of claim 6, as indicated above, except for rear grip to have a passage slidably receiving a rear end of the shaft and the resilient material therebetween. An obvious modification in view of Jacobs et al., (see section 10 above).

Lipka et al. as modified by Zeisig and Jacobs et al. meets all of the limitations of claims 14, 34 and 36.

14. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lipka in view of Jacobs et al. as applied to claims 20, above, and further in view of Zeisig.

Art Unit: 3723

Lipka et al. as modified by Jacobs et al. meets all of the limitations of claim 24, as indicated above, except for the ergonomic handle. An obvious modification in view of Zeisig (see section 9 above).

15. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipka in view of Jacobs et al. as applied to claims 20, above, and further in view of Adams.

Lipka et al. as modified by Jacobs et al. meets all of the limitations of claim 26, as indicated above, except for the axially adjustable fore grip. An obvious modification in view of Adams (see section 7 above).

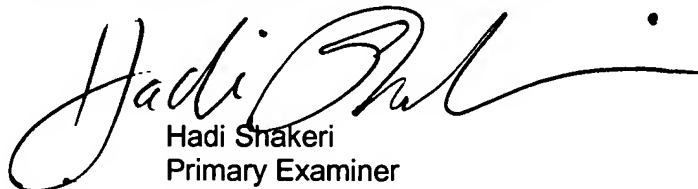
Conclusion

16. Prior art made of record and not relied upon are considered pertinent to applicant's disclosure. Nisenbaum, Crookston and Hopper are cited to show related inventions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hadi Shakeri whose telephone number is (571) 272-4495. The examiner can normally be reached on Monday-Thursday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hadi Shakeri
Primary Examiner
Art Unit 3723
July 29, 2005